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 CITY OF LAS VEGAS

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

ANN CHRZANOWSKI,

Plaintiff,

CASE NO. CV-S-05-0418-RLH-PAL

vs.

JUDGE GEORGE ASSAD, CITY OF LAS
 VEGAS, a political subdivision of the state
 of Nevada; MARSHALL R. SAAVEDRA,
 John Does, I-X, each individually and in
 their official capacities,

Defendants.

DEFENDANT CITY OF LAS VEGAS'
REPLY TO OPPOSITION TO MOTION TO DISMISS

Defendant CITY OF LAS VEGAS (hereinafter "CITY"), through its attorneys, BRADFORD R. JERBIC, City Attorney, by PHILIP R. BYRNES, Deputy City Attorney, replies to Plaintiff's Opposition to Motion to Dismiss as follows:

Under the allegations of her Complaint, Plaintiff alleges she was taken into custody by a court marshal at the direction of a Municipal Judge. She attempts to hold the CITY liable based upon the actions of the marshal. As discussed in, the City's original motion, the CITY cannot be held liable under these circumstances.

In an attempt to avoid dismissal, Plaintiff attempts to raise a factual dispute regarding "the Judge's position on Defendant Saavedra's conduct." Opposition to Motion to Dismiss at 2. This

1 matter is not raised in the Complaint and Plaintiff has not offered any evidence by affidavit or
 2 otherwise, concerning this point pursuant to Fed.R.Civ.P. 12(b).

3 Plaintiffs unsupported allegations in their points and authorities are insufficient to avoid
 4 dismissal. In *Schneider v. California Dept. of Corrections*, 151 F.3d 1194, 1197, n1 (9th Cir.
 5 1998), the Ninth Circuit stated:

6 Perhaps recognizing that their complaint was (at best)
 7 ambiguous, the inmates insisted in their memorandum to the district
 8 court opposing the State's motion to dismiss that their ITAs do
 9 indeed earn interest but that the interest is credited to the Inmate
 10 Welfare Fund rather than to them as individual prisoners. **The**
 11 **"new" allegations contained in the inmates' opposition motion,**
 12 **however, are irrelevant for Rule 12(b)(6) purposes. In**
 13 **determining the propriety of a Rule 12(b)(6) dismissal, a court**
 14 **may not look beyond the complaint to a plaintiff's moving**
 15 **papers, such as a memorandum in opposition to a defendant's**
 16 **motion to dismiss.** See *Harrell v. United States*, 13 F.3d 232, 236
 17 (7th Cir.1993); see also 2 Moore's Federal Practice, § 12.34[2]
 18 (Matthew Bender 3d ed.) ("The court may not ... take into account
 19 additional facts asserted in a memorandum opposing the motion to
 20 dismiss, because such memoranda do not constitute pleadings under
 21 Rule 7(a)."). The focus of any Rule 12(b)(6) dismissal--both in the
 22 trial court and on appeal--is the complaint. (Emphasis added.)

23 The Court should disregard the bare assertions in Plaintiff's points and authorities.

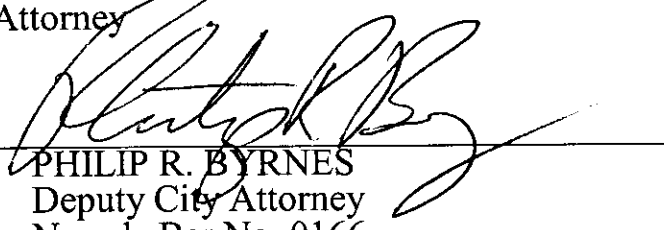
24 The factual allegations in Plaintiff's Complaint do not support a finding against the CITY.

25 The Motion to Dismiss should be granted.

26 DATED this 21st day of October, 2005.

27 BRADFORD R. JERBIC
 28 City Attorney

By


 PHILIP R. BYRNES
 Deputy City Attorney
 Nevada Bar No. 0166
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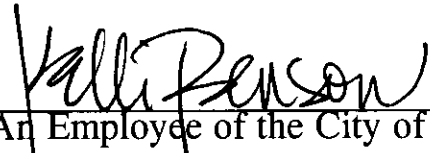
CERTIFICATE OF MAILING

I hereby certify that on this 21st day of October, 2005, I placed in the United States Mail at Las Vegas, Nevada, postage prepaid, a copy of the above and foregoing Defendant City of Las Vegas' Reply to Opposition to Motion to Dismiss, addressed as follows:

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An Employee of the City of Las Vegas

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